the case before us might even be described as mandatory, and the manner of signing seems to show clearly that they are imposed by the landlord as a condition of the letting. They are not a mere promise by the tenant.

In a more recent case *Commissioners of Works v. Hull*[4] the prohibition describes itself as a regulation, and the report describes it, I think rightly, as a condition. It is referred to in argument and judgment as a covenant, which in form apparently it could not be. The regulations contained a provision approximating to a proviso for re-entry on breach of any of the regulations, which may have included purely collateral matters unlike this as to the identity of a party. The landlord was thus doubly protected, but on such a prohibition a proviso would seem to me to be redundant. The proviso was not relied upon, and though called a covenant the prohibition seem to be treated as a condition. The case turned mainly on the appropriate remedy. That case was founded on trespass and in that supports the respondent's action here.

For these reasons I do not think the learned Judge's finding that appellant is a tenant to the respondent can possibly be upheld. On the other hand the order made was in my opinion right and the appeal fails.

Appeal Dismissed.

RE A. M. DRYSDALE (DECEASED); MUNICIPAL COMMISSIONERS OF THE TOWN OF SINGAPORE v. THE OFFICIAL ASSIGNEE.

[Bankruptcy Jurisdiction (Murray-Aynsley, C. J.)
November 25, 1949]

[In Bankruptcy No. 361 of 1941]

Action to recover money paid ex gratia to estate of deceased who was a bankrupt and subsequently paid to creditors — Quasi-contract — Whether Official Assignee has a duty to repay money — Bankruptcy.

In 1946 and 1947 the Municipal Commissioners passed certain resolutions for the making of ex gratia payments to employees in respect of the Japanese occupation. One of the persons who became entitled to this bounty was one A. M. Drysdale, who had been a bankrupt in 1941 and died in 1945 and was still a bankrupt at the time of his death. On February 20, 1948, the Municipal Treasurer paid a sum of money to the Official Assignee in respect of the said A. M. Drysdale. It appeared that in accordance with the resolutions in force at that time the payment was correctly made. On the 30th of April, 1948, the Municipal Commissioners passed a further resolution the effect of which was that payments in respect of deceased officers should be made to the dependents of the deceased or such other persons as they should think proper. The Municipal Commissioners subsequently brought a motion to recover such part of the sum as had been paid by the Official Assignee to the creditors of the deceased bankrupt.

Held, (1) that as there was no mistake of law or otherwise in this case and as the payment was a voluntary payment and the money had been paid out, the doctrine of Ex parte James dealing with the recovery of money paid under mistake of law did not apply; (2) that the Official Assignee was under no obligation, moral or otherwise, to have regard to a subsequent change of policy of the Municipal Commissioners; and (3) that the application must be dismissed.

Cases referred to :—

(1) *Ex parte James* 9 Ch. App. 609; 43 L.J. Boy 107.
(2) *Ex parte Villars* 9 Ch. App. 432.
(3) *Re Saxon Life Assurance Society* 2 J. & H. 408.
(4) *Stone v. Godfrey* 5 De G. M. and G. 76.
(5) *Ex parte Simmonds, in re Carnac* (1885) 16 Q.B.D. 308.
(6) *Rogers v. Ingham* (1876) 3 Ch. D. 351.
(7) *In re Tyler* (1907) 1 K.B. 865.
(8) *In re Hall* (1907) 1 K.B. 875.
(9) *In re Phillips* (1914) 2 K.B. 689.
(10) *In re Craig, ex parte Hinchcliffe* (1916) 2 K.B. 497.
(11) *In re Stokes* (1919) 2 K.B. 256.
(12) *In re Thellusson* (1919) 2 K.B. 735.
(13) *In re Wigzell* (1921) 2 K.B. 835.
(14) *Scranton's Trustee v. Pearse* (1922) 2 Ch. 87.
(15) *Sutters v. Briggs* (1922) 1 A.C. 1.
(16) *In re Leslie* (1883) 23 Ch. D. 552.
(17) *Falcke v. Scottish Imperial Insurance Co.* (1886) 34 Ch. D. 234.
(18) *Sebel Products Ltd. v. Commissioners of Customs and Excise* (1949) Ch. 409.
(19) *Aiken v. Short* 1 H. & N. 210.
(20) *Kerrison v. Glyn Mills, Currie & Co.* 81 L.J., K.B. 465.
(21) *Jones v. Waring and Gillow* (1926) A.C. 670.
(22) *Steam Saw Mills v. Baring Brothers* (1922) 1 Ch. 244.

MOTION IN BANKRUPTCY.

Dr. C. H. Withers-Payne for the Applicants.

D. Chapman, Assistant Official Assignee, for the Respondent.

Murray-Aynsley, C. J. : — In the course of 1946 and 1947 the Municipal Commissioners passed certain

resolutions for the making of payments to employees in respect of the period of the Japanese occupation. The Municipal Commissioners regard these payments as ex gratia, or in English as gifts. Whether the recipients so regarded them is open to question, but the matter has been argued on that basis.

The conditions under which these payments were made have been set out in the affidavit of Mr. Stevens. The conditions incorporated certain provisions adopted by the Government of the Colony. I think the only provision material to the present issue is one that payments should be made to the estate of deceased officers.

Among those who had become entitled to this bounty was one A. M. Drysdale who had been made a bankrupt in 1941 and died in 1945, and was still a bankrupt at the time of his death. On February 20th, 1948, the Municipal Treasurer paid a sum of money to the Official Assignee in respect of the said A. M. Drysdale. It appears that in accordance with the resolutions in force at that time the payment was correctly made.

On April 30th, 1948, the Municipal Commissioners passed a further resolution the effect of which was that payments in respect of deceased officers should be made to the dependents of the deceased or such other persons as the Commissioners should think proper.

On May 7th, 1948 the Municipal Secretary informed the Official Assignee of this.

On May, 1948, the Assistant Official Assignee replied. So far as it is material his letter amounts to this: Payments received after April 30th would be paid over to relatives. Those received before that date would be administered as assets of the various bankruptcies.

On May 13th, 1948, the Official Assignee paid over as much of the sum received as was sufficient to pay a dividend of 100 per cent in the bankruptcy. The balance was, by an order of Court, paid out subsequently to the widow.

The Municipal Commissioners seek to recover such part of the sum as was paid out to the creditors.

This claim is based on what may be termed the rule or doctrine of *Ex parte James*[1]. The facts in that case are interesting and peculiar. There was a competition for certain funds between the trustee in bankruptcy and an execution creditor. Another case where the same question arose, *Ex parte Villars*[2], had been decided by Mellish, L.J. in the sense favourable to the trustee, and on the strength of that the execution creditor paid over the sum of money concerned to the trustee. Subsequently the matter of *Ex parte Villars* was reheard by a Full Court consisting of Lord Cairns, James, L.J. and again Mellish, L.J. This Court unanimously came to the opposite conclusion, (see 9 Ch. App. 432). On this the execution creditor wanted his money back. The Registrar made an order to that effect and the trustee appealed. The argument for the execution creditor seems to have been based on the doctrine that in equity the rule regarding money paid under mistake of law did not apply invariably, as counsel argued, "not an inflexible rule". They cited two cases: *Re Saxon Life Assurance Society*[3] and *Stone v. Godfrey*[4]. In both of these cases the Court had rather vaguely held out claims to relieve against mistakes of law.

In his judgment James, L.J. seems to have decided on those lines. He uses the words "money which in equity belongs to someone else". I am sure that when an equity lawyer used the word "equity" in the year 1874, he intended to use it in a technical sense, not in a vague or popular sense. Mellish, L.J. merely agreed. It will be seen that at this date the principle invoked had nothing peculiarly to do with bankruptcy, that it was merely a case of quasi contract and was possible owing to the fact that ideas on quasi contract were still fluid. It should be noted that in that case the money was still in the hands of the trustee.

The next application of the doctrine was in *Ex parte Simmonds, in re Carnac*[5]. Counsel who invoked the aid of *Ex parte James,* that very learned equity lawyer J. G. Wood, put the case differently. By that time the doctrines of quasi contract had solidified somewhat. He put it: "the ordinary rule that money paid under a mistake of law cannot be recovered does not apply to a trustee in bankruptcy. He is an officer of the Court and the Court will direct him to do that which is morally right." In the meanwhile the case of *Rogers v. Ingham*[6] had decided that the rule as to payment by mistake of law applied equally in equity and law.

The judgments in *Ex parte Simmonds* are based not on any rule applicable to the generality of mankind but formulate a special rule as to high-mindedness applicable to trustees in bankruptcy and others who are officers of the Court, who in any case handle other people's money. From henceforth the rule, such as it is, becomes a bankruptcy and quasi-bankruptcy rule with no general application. In that case the money had been paid out by the trustee but the trustee was to recoup himself out of other funds that were to come into his hands.

In 1907 the rule had another and a different kind of application, *In re Tyler*[7]. There the facts were quite different. Before his bankruptcy a bankrupt had insured his life. Before, during and after the bankruptcy his wife paid the premiums. These policies had been used to secure loans from banks. The wife also paid the interest. On the death of the bankrupt the question arose as to the disposal of the proceeds of the policies after payment of what was due to the bank. The wife claimed to be recouped what she had paid in premiums and interest. Bigham, J. held that the wife had no legal, and probably no equitable, right but decided in favour of the widow on the ground that it would be an injustice for the creditors to get the benefit of what the wife had expended. The Court of Appeal decided that the rule in *Ex parte James* was not limited to mistake of law but would apply generally, where to do otherwise would be permitting its officer to do something dishonest. This decision was based on the knowledge imputed to the trustee (actually knowledge came to a clerk of his predecessor). At the same time the Court of Appeal had under consideration *In re Hall*[8]. There mortgagees in mistake of law but with knowledge of an act of bankruptcy paid out money to assenting creditors in the belief that they could add this sum to their security. When the property mortgaged was sold, the trustee claimed the surplus without giving the mortgagees credit for what they had already paid out. The Court of Appeal, differing from a divisional Court, decided in favour of the trustee. The basis of the decision was that there was nothing in the conduct of the trustee that was blameworthy.

These cases apply a different criterion, no one could have suggested that there was anything blameworthy on the part of the trustee in *Ex parte James* or *Ex parte Simmonds.*

In re Phillips[9] was another case of an insurance policy. There during the period that his discharge was suspended, a bankrupt insured his life. After his discharge he continued to pay the premiums. Later he became bankrupt a second time and ultimately died. There was competition between the two bankruptcies for the amount paid in premiums after discharge. The trustee of the first bankruptcy was allowed to keep the lot. The basis of the decision was again lack of knowledge.

In *In re Craig, ex parte Hinchcliffe*[10] there had been an execution. The execution creditor paid a sum to the landlord to satisfy claims of rent. The sheriff in mistake of law paid the proceeds of sale to the trustee of a supervening bankruptcy less expenses, but without repaying to the execution creditor what had been paid to the landlord. Horridge, J., after deciding the question of law involved, applied *Ex parte James* and ordered the trustee to make the refund. That, it will be seen, was a simple mistake of law case.

In re Stokes[11] was another insurance case. For practical purposes it was the same as *In re Phillips* except that the bankrupt did not go bankrupt a second time, and his widow claimed. The bankrupt, when he took out the policy, was paid a salary by the liquidator and paid his premiums out of his salary until his discharge, thereafter he paid them out of his earnings until his death. Horridge, J. decided in favour of the trustee.

In the same year was decided the case of *In re Thellusson*[12]. That case was peculiar. There the applicant had, in ignorance of a receiving order and of an act of bankruptcy and of a bankruptcy petition, lent the debtor a sum of money. The debtor was ignorant at the time of the receiving order but had, of course, knowledge of the act of bankruptcy; the debtor knew that a petition had been set down for hearing the preceding day.

In this case there was no mistake of law and no misconduct could be imputed to the trustee, but in spite of that the trustee was ordered to refund such part of the loan as came into his hands. In this case, as it would have been dishonourable of the debtor to receive the money if he had knowledge of the receiving order, this would make it dishonourable for the trustee to retain it. A strong Court of Appeal, Warrington, Duke and Atkin, L.JJ. reversed Horridge, J. This case makes a great extension, as it goes beyond what were the previous limits to the rule. It is very hard to say what according to that case the limits should be. Prolonged study of that case does not make it easy to say what the ratio decidendi was.

The difficulty is increased when one considers the next case in order of time, *In re Wigzell*[13]. In that case there had been a receiving order. A stay had been granted and it was not advertised. The debtor had a banking account, which the bank in ignorance of the receiving order, allowed him to operate. The debtor paid in a certain amount but drew out rather more. The trustee claimed what had been paid in after the receiving order. The Court of Appeal, affirming Horridge and Salter, JJ., allowed him to do so.

Except that in one case it was a bank and the other a subaltern concerned, it is hard to distinguish between the cases. Horridge, J. said :—

> (p. 843) I cannot think that the judgment of the Court of Appeal was intended to lay down the general principle that the trustee ought never to enforce his rights in respect of payments made after a receiving order in ignorance of the receiving order being made. I think what the judgment did decide was that on the facts of that particular case it would not be right for the trustee to enforce his claim.
>
> (p. 844) I think the true view of the decision of the Court of Appeal is that the Court ought to ascertain in each case whether or not it is honest and right for the trustee to make his claim.

Salter, J. tried to distinguish the two cases and pointed out the unsatisfactory condition of the law.

> (p. 845) The question to be decided is, therefore, one of ethics, not of law.
>
> Legal rights can be determined with precision by authority, but questions of ethical propriety have always been, and will always be, the subject of honest difference amongst honest men. The effect of exercising the jurisdiction which these decisions have asserted and defined is to deprive the creditors of money which is divisible among them by law. I feel sure that such a power should not be used unless the result of enforcing the law is such that, in the opinion of the Court, it would be pronounced to be obviously unjust by all right minded men . . . . . There is, in my opinion, a material difference between the facts we have to consider and those in **In re Thellusson** and in the cases which that decision followed and extended. In those cases the assets had been increased . . . . . In the present case the assets have been diminished, and diminished by conduct of the debtor which was equally unfair to the appellants (the bank) and to the creditors.

I do not think that this was a really material difference or one that made any difference to the claims on the conscience of the trustee.

In this case the Court considered the effect of the Bankruptcy Act, 1919, sections 18 subsec. (i), 37 subsec. (i), 38 (9), 45, 46. The case was argued in the Court of Appeal by counsel of great eminence and the Court was a fairly strong one, though perhaps not stronger than that which decided *Thellusson's Case*, Lord Sterndale, Scrutton and Younger, L.JJ. Lord Sterndale, at p. 850, was critical of the whole doctrine :—

> (p. 851) It seems to me to have been established that there must be read into s. 45 of the Bankruptcy Act, 1914, (our section 52) after the second proviso, a third proviso: 'Provided that the transaction whenever it takes place is one which it would not be honourable or high minded for a trustee to impeach.' . . . . . I notice that Lord Esher in **Ex Parte Simmonds** says that the principle being a good, a righteous, and a wholesome one, he eagerly desires to adopt it. I have not thought it relevant to consider whether I adopt it with eagerness or not. When I find a principle laid down by a Court whose decision is binding upon me, I think the only thing I can do is humbly and faithfully to follow it to the best of my ability, and that is the only view that I take of that principle."

After pointing out the unsatisfactory results of various earlier cases he said :—

> (p. 856) We have no right to legislate and give protection that the Act does not give. It has been said that bankruptcy is the creation of statute, and that the decisions of the Courts have added fair-mindedness and high-mindedness to the actual words of the Acts of Parliament, but this to my mind is asking us to give a protection which can only be given by the Legislature, and it is for the Legislature to consider whether or not it will give it.

Scrutton, L.J. (at page 857) was equally critical of the whole doctrine :—

> It is a case of some little difficulty, because owing to the decisions of this Court Judges sworn to administer the law and endeavouring to apply the law find themselves brought into a region which is not law, but ethics; a matter on which individual minds may easily differ.
>
> (p. 858) Now the decisions of this Court have established that though in law the money is the money of the trustee for the creditors, yet he may be restrained from enforcing his claim to it or retaining it if (and a series of phrases none of which are very definite have been used) it were not honourable — if it were not high minded — if it would be contrary to natural justice — if it would be shabby — if it would be a dirty trick for him to retain it — or to take perhaps the most temperate statement of the principle, which I find given by Buckley, L. J. in **In re Tyler** and cited with approval by Atkin, L. J. in **Thellusson's Case**: 'Assuming that he (the officer of the Court) has a right enforceable in a Court of Justice, the Court of Bankruptcy or the Court for the administration of estates in Chancery will not take advantage of that right if to do so would be inconsistent with natural justice and that which an honest man would do.' I desire to say very respectfully that it seems to me that when we have got into this atmosphere we have reached a region of uncertainty."

Lord Justice Younger also criticized various applications of the doctrine in particular *In re Stokes* but did not go so far as to express disapproval of it altogether.

A final illustration is in *Scranton's Trustee v. Pearse*[14]. There a trustee in bankruptcy wanted to take advantage of *Sutters v. Briggs*[15] and recover back money which the bankrupt had paid his bookmaker. One would have thought that at last one had reached a case where all high minded men would agree. Astbury, J. thought it was not high minded. The Court of Appeal (Lord Sterndale, Warrington and Younger, L.JJ.) thought that it was.

The position on the authorities is this, the rule exists in some not very well defined form. Until the House of Lords decides otherwise, there it is. It is a result of the very imperfect formation of a doctrine of quasi-contract in Egnlish law. Owing to the lack of an adequate doctrine, cases arise which are rather shocking and the Courts have tried to soften hard cases by bad law. Why only the creditors of a bankrupt should be victims of high-mindedness is not explained.

The absence of an adequate doctrine of quasi-contract caused the unfortunate distinction between payments made in mistake of fact and payments in mistake of law which is not known in countries following the Roman Law and which has no rational justification. In the same way English law failed to do anything for the volunteer. who paid insurance premiums; (see *In re Leslie*[16], *Falcke v. Scottish Imperial Insurance Co.*[17]).

An interesting example of the difficulties that arise is found in *Sebel Products Ltd. v. Commissioners of Customs and Excise*[18]. There the learned Judge had to resort to a legal fiction to avoid an intolerable situation.

Prehistoric man untroubled by theory was able to invent general average; at a later period salvage was invented by the Courts. In modern times an excess of theory has prevented the Courts from dealing with other situations that have arisen. The doctine of *Ex parte James* is in its limited sphere in bankruptcy, etc., irrational. Its application has been spasmodic and also irrational. Surely those who paid insurance premiums had stronger claims in natural justice than the claimant in *In re Thellusson*. I have had to devote a lot of space in attempting to find out what exactly is the doctrine I am invited to apply. I think it would be wrong to extend its application.

I do not think that in the case under consideration there is any mistake of law or otherwise. The Municipal Commissioners were free to make presents to whom they liked. A present to the estate of a deceased employee who was bankrupt enured to the benefit of his creditors as a matter of law. There is nothing to show that the Municipal Commissioners laboured under any misapprehension. At a later period they decided to make presents to relatives instead of to creditors, as they were entitled to do. Once a payment was made it was complete and I do not consider that once the Official Assignee had received the money he was under any obligation or duty except to pay it out according to law. I do not think that once the payment was made the Municipal Commissioners could change its destination. I do not think that the Official Assignee was under any obligation, moral or otherwise, to have regard to a subsequent change of policy of the Municipal Commissioners.

Also I am not sure that in view of *Aiken v. Short*[19] even if there had been a mistake, the doctrine would apply to voluntary payment. In view of *Kerrison v. Glyn Mills, Currie & Co.*[20] and *Jones v. Waring and Gillow*[21] and also *Steam Saw Mills v. Baring Brothers*[22] the question is obscure.

There is also a distinction from earlier cases in that the money is paid out, cannot be recovered from the creditors and there is no prospect of further assets coming to hand.

To make any order in the circumstances would go beyond what was done in any other case. That point does not call for any decision at present. The motion must be dismissed.

Motion Dismissed.

TAN CHEE KONG v. LEE EE LIAT.

[Orig. Civ. Juris. (Taylor J.), June 14, 1949]

[Singapore — Civil Suit No. 116 of 1949]

Libel — Publication through post — Words "Ex-informer Kempeitai" — Quantum of damages.

The Defendant sent a letter addressed to the Plaintiff on the envelope on which were written the words:—

"To
Tan Chee Kong, Ex-Informer, Kempeitai,
61-B Eng Hoon Street, Singapore."

The letter was delivered in the ordinary course of the post to the Plaintiff's house.

Held: that the words "Ex-informer Kempeitai" are defamatory; that communication through the post office is sufficient publication but as the publication was limited in extent this fact materially reduces the quantum of damages.

ACTION FOR DAMAGES.

Eric Choa for the Plaintiff.

Defendant in person.

Taylor, J. : — In this action for libel the plaintiff is a clerk and the defendant a medical practitioner. The plaintiff received a letter addressed to himself at his home address and on the envelope the words "Ex-Informer — Kempeitai" were inserted between his name and the address. The letter was delivered in the ordinary course of the post to his house. The name was correctly spelt and the address is correctly given. The contents of the letter are not strictly relevant; it is sufficient to say it did not contain anything mitigating the libel carried on the cover. In my opinion, the words are a short way of saying that during the enemy occupation this man was an "informer" for the Kempeitai.

It is perfectly true that it was possible to work for the Japanese in various capacities without incurring odium. If it were said that Mr. So-and-So worked for the Japanese or that So-and-So consented to serve